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MT LEGISLATIVE HISTORY

Chapter 103 1981

Bill H _____ (S) 111 Original bill & hist. ✓C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 05	✓C	Hearing Date(s)	Jan 19	✓C
		C		Jan 20	✓C
		C			C
		C			C
Date Out		C		Jan 20	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 83	1/08/81	1/14/81	1/19/81			1/19/81			
SB 89	1/09/81	1/14/81	1/20/81	1/20/81					
SB 94	1/10/81	1/15/81	1/15/81	1/15/81					
SB 111	1/13/81	1/19/81	1/20/81			1/20/81			
SB 112	1/13/81	1/19/81	2/14/81			2/14/81			
SB 117	1/14/81	1/20/81	1/23/81			1/23/81			
SB 119	1/14/81	1/22/81	1/23/81	1/23/81					
SB 120	1/14/81	1/22/81	2/07/81			2/07/81			
SB 144	1/15/81	1/29/81	1/30/81			1/30/81			
SB 145	1/15/81	1/23/81	1/23/81	1/23/81					
SB 149	1/16/81	1/23/81	1/30/81			1/30/81			
SB 159	1/16/81	transferred to Fish & Game							
SB 161	1/16/81	1/26/81	2/04/81			2/04/81			
SB 162	1/16/81	1/26/81	1/30/81			1/30/81			
SB 164	1/17/81	2/02/81	2/07/81			2/07/81			
SB 174	1/17/81	2/02/81	2/04/81	2/04/81					

Use a separate sheet for Senate, House Bills, and Resolutions

SENATE BILL NO. 111

INTRODUCED BY STIMATZ

BY REQUEST OF THE DEPARTMENT OF JUSTICE

IN THE SENATE

January 13, 1981	Introduced and referred to Committee on Judiciary.
January 21, 1981	Committee recommend bill do pass as amended. Report adopted.
January 22, 1981	Bill printed and placed on members' desks.
January 23, 1981	Second reading, do pass.
January 24, 1981	Considered correctly engrossed.
January 26, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

January 27, 1981	Introduced and referred to Committee on Judiciary.
March 5, 1981	Committee recommended bill be concurred in. Report adopted.
March 7, 1981	Second reading, concurred in.
March 10, 1981	Third reading, concurred in. Ayes, 85; Noes, 12.

IN THE SENATE

March 11, 1981	Returned from House. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

BILL NO. 111

INTRODUCED BY Grace Stimatz

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE DRIVING UNDER INFLUENCE LAWS BY PROVIDING THAT QUALIFIED PERSONS ACTING UNDER THE SUPERVISION AND DIRECTION OF A PHYSICIAN OR A REGISTERED NURSE MAY WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW; BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO SUCH PERSONS; AND BY CHANGING "INTOXICATING LIQUOR" TO "ALCOHOL"; AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404, AND 61-8-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Chemical blood, breath, or urine tests. (1) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of 61-8-401, to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested by a peace officer for driving or in actual physical control of a motor vehicle while under the influence of ~~intoxicating liquor~~ alcohol. The test shall be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of ~~intoxicating liquor~~ alcohol. The arresting officer may designate which one of the aforesaid tests shall be administered.

(2) Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a person under arrest refuses upon the request of a peace officer to submit to a chemical test designated by the arresting officer as provided in subsection (1) of this section, none shall be given, but the division, upon the receipt of a sworn report of the peace officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public highways of this state while under the influence of ~~intoxicating liquor~~ alcohol and that the person had refused to submit to the test upon the request of the peace officer, shall suspend the license or driving privilege of such person on the highways of this state for a period of 60 days. Like refusal by a nonresident shall be subject to suspension by the division in like manner. All

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INTRODUCED BILL

SB 111

such suspensions are subject to review as hereinafter provided."

Section 2. Section 61-8-403, MCA, is amended to read:

"61-8-403. Right of appeal to court. The division shall immediately notify any person whose license or privilege to drive has been suspended, as hereinbefore authorized, in writing and such person shall have the right to file a petition within 30 days thereafter for a hearing in the matter in the district court in the county wherein such person shall reside. Such court is hereby vested with jurisdiction and it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney of the county wherein the appeal is filed and such county attorney shall represent the state, and thereupon the court shall take testimony and examine into the facts of the case, except that the issues shall be limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of ~~intoxicating liquor~~ alcohol, whether the person was placed under arrest, and whether such person refused to submit to the test. The court shall thereupon determine whether the petitioner is entitled to a license or is subject to suspension as heretofore provided."

Section 3. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible. (1) Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of ~~intoxicating liquor~~ alcohol, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his blood, breath, or urine is admissible.

(2) If the person under arrest refused to submit to the test as hereinabove provided, proof of refusal shall be admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle upon the public highways while under the influence of ~~intoxicating liquor~~ alcohol.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of ~~intoxicating liquor~~ alcohol."

Section 4. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a physician or registered nurse ~~or other qualified person under the supervision and direction of a physician or registered nurse~~ acting at the request of a peace officer may withdraw blood for the purpose of determining the

alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of the test taken at the direction of a peace officer.

(3) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(4) No physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer such a test.

(5) If the test given under 61-8-402 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the

dignity of the individual involved.

(6) The division of motor vehicles in cooperation with the state board of health and environmental sciences, or any other appropriate agency, shall adopt uniform standards for the giving of blood alcohol tests and may require certification of training to administer such tests as deemed necessary."

-End-

SB 111

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 19, 1981

The eighth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 111:

AN ACT TO AMEND THE DRIVING UNDER INFLUENCE LAWS BY PROVIDING THAT QUALIFIED PERSONS ACTING UNDER THE SUPERVISION AND DIRECTION OF A PHYSICIAN OR A REGISTERED NURSE MAY WITHDRAW BLOOD FOR THE PURPOSE OF DETERMINING ALCOHOL CONTENT UNDER THE IMPLIED CONSENT LAW; BY EXTENDING PROTECTION FROM CIVIL OR CRIMINAL LIABILITY TO SUCH PERSONS; AND BY CHANGING "INTOXICATING LIQUOR" TO "ALCOHOL".

Senator Stimatz, District 43, Butte, introduced the bill at the request of the Department of Justice. Beer and wine are currently excluded from the definition of "intoxicating liquor", which is why he feels the term should be changed to "alcohol." Additionally, he suggests that qualified persons, such as laboratory technicians, be allowed to take blood samples to determine alcohol level of the blood. Senator Stimatz offered an amendment to the bill to amend the title on Page 1, line 11, by adding "by changing the reference to the rule-making body" after "persons"; and also to amend line 3 on page 6 after "the" by deleting "state board of health and environmental sciences" and inserting "Division of Forensic Sciences".

Speaking briefly in favor of the bill were Captain Walt Miller, of the Montana Highway Patrol; Chad Smith, of the Montana Hospital Association; Tom Honzel, for the County Attorneys Association; and David Lackman, lobbyist for the Montana Public State Health Association. Mr. Lackman presented written testimony (marked Exhibit A and attached to these minutes).

Senator Mazurek asked if even broader language in determining

who was qualified to draw a blood sample might be helpful. Larry Majerus, from the Montana Department of Justice, stated that the main intent was to allow the medical technicians to be included, not to take the process out of the hospital environment where such qualified persons would not be available. He added that in an "on the highway" situation away from a hospital there were other techniques available, such as breath analysis.

CONSIDERATION OF SENATE BILL 112:

AN ACT TO AMEND SECTION 49-3-303, MCA, TO REQUIRE EXHAUSTION OF ADMINISTRATIVE REMEDIES BEFORE THE COMMISSION FOR HUMAN RIGHTS PRIOR TO BRINGING SUIT IN DISTRICT COURT FOR ALLEGED UNLAWFUL DISCRIMINATION.

Senator Tveit, District 27, presented the bill on behalf of the School Board Association. He distributed copies of his testimony (marked Exhibit B and attached to these minutes) which he read aloud.

Chad Smith, representing the Montana School Boards Association, also spoke on behalf of the bill, stating that there has been a number of charges filed before the Human Rights Commission, only to find that they were also being filed independently in district court. This is a duplication of proceedings and a waste of effort, as well as a form of harrassment against some small entity which is forced to defend itself against two proceedings at the same time. This means double cost to the taxpayers.

John Frankino, Chairman of the Human Rights Commission, said that their concern with this area of the law has been registered in Senate Bill 56, also under consideration. A fact sheet relative to this bill was submitted (marked Exhibit C, and attached to these minutes).

Karen Townsend, a four-year member of the Human Rights Commission said that SB 112 conflicts with SB 56, which in her opinion is a better bill because it does not preclude the plaintiff's filing in district court if the administrative proceeding has not progressed adequately at the end of six months.

Senator S. Brown suggested that this committee hold this bill and that Senate Bill 56 be referred to the Senate Judiciary Committee, so the two bills can be studied together.

DISPOSITION OF SENATE BILL 63:

Senator S. Brown recommended DO PASS, with the understanding

DISPOSITION OF SENATE BILL 111:

David Niss discussed with the committee the two proposed amendments raised in yesterday's meeting, and suggested also that on page 6, line 4, the word "standards" by stricken and changed to read "rules". Senator B. Brown moved that all three amendments be adopted, and the motion carried unanimously. Senator Halligan then moved that Senate Bill 111 DO PASS AS AMENDED, a motion which carried unanimously.

FURTHER CONSIDERATION OF SENATE BILL 112:

It was the feeling of the committee that Senate Bill 56, which is presently in the Committee on State Administration, should be moved into this committee before disposition of this bill is made. Senator Crippen moved that this committee pass on Senate Bill 112 for the day, and passage of the motion was unanimous.

DISPOSITION OF SENATE BILL 89:

Upon a motion by Senator B. Brown, the bill was given a unanimous DO PASS. However, Senator Mazurek requested that discussion be reopened. Senator Olson moved that discussion be reopened, and all committee members voted in favor of the motion except Senator Tveit.

Senator Mazurek stated his concern that by enacting this bill as written the committee would be forcing the Attorney General's office into repeatedly making costly and ineffective challenges to determine whether the federal government has the sole right to preemption, or whether the state law can control such preemptions. He stated that once this question is settled, regardless of how it is settled, additional suits would be unnecessary.

David Niss stated that each action could come up under different applicable law, and under different circumstances, so that one decision would not necessarily be decisive regarding future projects.

Senator B. Brown moved once again that the bill be granted passage; and the vote was eight to two in favor of the motion.

DISPOSITION OF SENATE BILL 24:

David Niss passed out copies of Idaho statutes dealing with the subject of jury exemptions (marked Exhibit B and attached to these minutes), and explained Sections 2-211, 2-212, and 2-216 of the Idaho Code.

STANDING COMMITTEE REPORT

January 20, 19 81

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 111

Respectfully report as follows: That SENATE Bill No. 111

be amended as follows:

1. Title, line 11.
Following: "PERSONS"
Insert: "BY CHANGING THE REFERENCE TO THE RULE-MAKING BODY"

2. Page 6, line 3.
Following: "the"
Strike: "state board of health and environmental sciences"
Insert: "division of forensic sciences"

3. Page 6, line 4
Following: "uniform"
Strike: "standards"
Insert: "rules"

And, as so amended,
DO PASS

Mike Anderson Chairman.

STATE PUB. CO.
Helena, Mont.

JUDICIARY COMMITTEE

47th Legislature

SENATE

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
89	Amending 75-20-202 to require Attorney General to bring action to determine jurisdic. of the state in each instance involving fed. enty. & fac. site.	1/26/81	Manley	3/5/81	Do Not Pass as Amended 3/9/81	3/9/81
94	Providing that a retired district judge may be a water judge.	1/23/81	Boylan	3/5/81	Do Pass 3/5/81	3/5/81
111	Amending the "driving under influence" laws to allow withdrawing blood by certain persons.	1/27/81	Stimatz	3/5/81	Do Pass 3/5/81	3/5/81
112	Amending 49-3-303 requiring exhaustion of adm. remedies before the Human Rights Commission prior to commencing suit.	2/21/81	Tveit	3/5/81	Do Pass as Amended 3/9/81	3/9/81
113	Amending 3-5-102 providing for a third district court judge in the first judicial district.	1/27/81	S. Brown	3/5/81	Do Pass 3/27/81	3/27/81
119	Revising duties of district court clerks.	1/29/81	Ochsner	3/6/81	Do Pass 3/9/81	3/9/81

W. W. LESLIE, Water Court Judge, was in support of the bill. The provisions of the bill have been discussed with Justice Harrison. The state is divided into four divisions with one water judge in each division. The state needs the bill and the manpower to enact the bill. The judge's pay is listed near the end of the bill.

BILL ASHER, representing APA, PLCA, SCPA & SCALA, stated all four of the groups he represents support the bill. An interim committee was involved in this. Not many people have the expertise in this area of law. There are only a few water experts in the state. We should capitalize on the opportunity to use the retired judges.

SENATOR TVEIT supported the bill.

There were no further proponents.

There were no opponents.

SENATOR BOYLAN closed the bill.

REP. EUDAILY stated usually a person cannot draw retirement if he goes back to work. LESLIE replied it is allowable in this case. The retirement is substracted from the salary of the judge. The judge will not get rich with this job.

REP. KEEDY stated the language in the bill would allow the Chief Justice to request that a retired judge become a water judge. LESLIE stated it is a type of command. The Chief Justice will not be asking a judge to do it that doesn't want to do it. There will be enough judges. If this bill is made law and given as a tool there will be enough judges.

SENATE BILL 111 REP. DAILY, presenting the bill for SENATOR STIMATZ, stated this bill's purpose is to amend the "driving under influence" laws to allow withdrawing blood by certain persons. There are three basic changes in the bill. "Intoxicating liquor" is being changed to "alcohol" because intoxicating liquor does not include beer or wine. Page 5, line 17 will allow a person other than a doctor or a registered nurse to draw blood. A lab technician who specializes in this could withdraw the blood. The third change in on page 6, line 4-5 changing from the State Board of Health and Environmental Sciences to the Division of Forensic Sciences.

WALT MILLER, Montana Highway Patrol, supports the bill. This would assist the department to apprehend the drunk driver as it would make it more convenient.

CHAD SMITH, Montana Hospital Association, stated the lab technician is the one who usually draws blood. The problem now is the prosecution can say that the test was not performed by a doctor or registered nurse and can argue the test was not validly performed. If this bill is passed there will no longer be that problem.

TOM HONZEL, County Attorneys, supports the bill. There is a problem with submitting evidence because a registered nurse or doctor did not perform the test.

There were no further proponents.

There were no opponents.

REP. DAILY closed the bill stating it was requested by the Department of Justice.

REP. EUDAILY asked why the Division of Forensic Sciences was included in the bill. LARRY MAJERUS, Department of Justice, replied the previous department is now under this division and it is more appropriate to have it listed as the Division of Forensic Sciences.

REP. EUDAILY asked if the lab technicians will have to be certified. It was replied they currently are certified.

REP. KEEDY asked if it is more common to have the blood test administered in comparison to the urine test or the breath test. MILLER replied the breath test is usually used because it is easier to administer and cheaper for the department. The blood test is usually performed if the person goes to the hospital. Sometimes the person would rather take the blood test because of the time delay, assuming that such delay will reduce the blood-alcohol level.

SENATE BILL 112 SENATOR TVEIT, chief sponsor of the bill, stated this is to amend 49-3-303 to require exhaustion of administrative remedies before the Human Rights Commission prior to commencing suit. Presently one case can be filed in two different forums, the Human Rights Commission and the District Court. This bill would allow filing in only one forum at a time. The would save the taxpayers money and court costs.

CHAD SMITH, Montana School Boards Association, supports the bill. This would not allow the unnecessary duplication of remedies. The Human Rights Commission is generally overburdened. There is a backlog of 180 cases. EXHIBIT 2.

SENATE BILL 94 REP. CURTISS moved do pass.

REP. KEEDY stated in Senate Bill 113 it was mentioned that most litigants do not want a retired judge to hear a case. There is an inadequate number of judges who are schooled in water law.

REP. CURTISS stated the real thrust is to provide that judges who have experience can retire from normal pursuits and do this. We need the experience of these judges.

REP. DAILY asked if a retired judge has to serve. The answer was no.

REP. BROWN stated he supports the bill. It is fortunate the judges still have the ability to handle the problems.

REP. SEIFERT stated the bulk of the water is on the seven reservations. The state takes the stand they will grant water rights in all cases where they apply but do not guarantee the rights. REP. KEYSER stated water judges do not hear trials.

The motion of do pass carried.

SENATE BILL 111 REP. CONN moved do pass.

The motion carried with REP. BROWN and REP. SEIFERT voting no.

SENATE BILL 112 REP. MCLANE moved do pass.

REP. KEEDY moved to hold the bill until he could work up some amendments.

The motion carried.

SENATE BILL 113 REP. CONN moved do pass.

REP. ANDERSON stated that redistricting was not the answer. Case-loads continue to increase and the population shifts within the state. Somewhere someone has to do something. JIM LEAR stated SJR2 concerns redistricting and will be heard later in this committee. REP. MCLANE moved to hold action on this bill until that bill is heard The motion carried with REP. CONN opposing it.

The meeting adjourned at 10:35 a.m.

KERRY KEYSER, CHAIRMAN

mr